THE HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION NO.20295 OF 2007

O R D E R:

This writ petition is filed by the petitioner aggrieved by the proceedings of the third respondent-the Executive Engineer (R&B), Spl. Division, Kothagudem, Khammam District, under which he issued the impugned proceedings, dated 29-08-2007 holding that he was instructed by the Sub-Registrar, Kothagudem to collect an amount of Rs.3,60,420/- towards the deficit stamp duty in respect of a lease deed executed by the petitioner with reference to collection of toll tax on bridge at toll point at Km.49/0 on Thallada-Bhadrachalam road for the period from 2003 to 2004. Therefore, the impugned proceedings are issued directing the petitioner to pay an amount of Rs.3,60,420/- towards the deficit stamp duty, failing which coercive action would be initiated.

The grievance of the petitioner is that the Executive Engineer is not the competent authority to determine the deficit stamp duty and the quantum of deficit stamp duty, if any, decided as is evident from the reference of the Sub-Registrar's communication, such quantification has been done without giving any notice and opportunity to the petitioner. Alternatively, it was also contended that the Sub-Registrar, Kothagudem, who issued communication to the third respondent is not competent to decide the deficit stamp duty, though he was the registering authority. Therefore, sought for quashing of the impugned proceedings.

At the time of hearing, learned counsel for the petitioner has placed before this Court copy of a judgment of a Division Bench of this Court in **Uppalapati Durga Prasad v.Executive Engineer (R&B)**

N.H.Division, Srikakulam and others[1] with reference to similar issue as to the nature of the document that was executed by a contractor with reference to the toll tax. In this judgment, the Division Bench held that the document in question was a lease deed and liable to stamp duty in terms of Section 2 (16) (c) of the Indian Stamp Act, 1899 (for short "the Act") as an instrument within sub-section (14) of Section 2 of the Act. However, the learned counsel for the petitioner has also relied upon a judgment of a learned Single Judge of this Court in **P.Venkata Rao v. Government of A.P. and others**[2], wherein it was held that the Sub-Registrar was not the competent authority to determine the deficit amount of stamp duty payable with reference to any instrument and it was only the Collector in terms of Section 41-A of the Act, who can decide the amount of stamp duty payable and the short amount of duty paid. Therefore, the learned counsel for the petitioner contended that the impugned proceedings are illegal and unsustainable.

Learned Government Pleader for Roads & Buildings, however, sought to contend that in terms of Section 38 of the Act, when once an instrument is found under Section 33 of the Act insufficiently stamped, if it is admitted by the party concerned, the same may be collected and transmitted to the Collector. In other cases, the person so impounding an instrument shall send it in original to the Collector for appropriate action, therefore, sought for appropriate orders.

Since there is a dispute as to whether the document in question was stamped properly or not, which according to the third respondent was not properly stamped and therefore, impounded the document and also demanded an amount of Rs.3,60,420/- towards the deficit stamp duty, which amount being disputed by the petitioner, in the above

circumstances, the third respondent is directed to transmit the impounded document in original to the Collector in terms of Section 38 of the Act, who in turn has to determine the deficit stamp duty, if any, that is liable to be paid by the petitioner. This has to be determined after following the procedure contemplated under the Act and till then the third respondent is not entitled to initiate any coercive steps against the petitioner.

The writ petition is accordingly disposed of with the above directions. No order as to costs.

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S.Ananda Reddy, J

Dated 4th October, 2007
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[1] 2001(4) ALD 176 (DB)
[2] 2006(1) ALD 821